

UK Edinburgh Reforms: PRIIPs regime

On 3 March (and following prior reporting in the [First Quarter 2023 edition](#) of this Quarterly Report in the context of the UK's [Edinburgh Reforms announcement](#)), ICMA [responded](#) to the UK Treasury's [PRIIPs and UK Retail Disclosure consultation](#).

ICMA agreed with the repeal of the PRIIPs regime, expecting that bonds do not need to be covered by the replacement disclosure regime being developed by the FCA and will be unambiguously excluded from its scope (noting the PRIIPs regime has been highly problematic in the bond markets and materially contributed to bond issuers being disincentivised from making bonds available to retail investors).

The response notably stated:

- (1) short form disclosure cannot include all information material to an investment decision (raising prohibitive liability risks for issuers) and has had high misunderstanding rates among retail investors;
- (2) the PRIIPs regime attempt to compare “substitute” products arguably mis-calibrated what is substitutable, and disclosing for comparability is difficult to achieve in a way that is meaningful;
- (3) prescriptive/inflexible requirements can be unhelpful (prescriptive metrics having been heavily criticised as being actively misleading) and should be left for application only if and when deemed necessary by the FCA (rather than entrenched up front in legislation);
- (4) disclosure requirements more generally are best left to subsidiary FCA rulemaking;
- (5) beyond the PRIIPs regime repeal, providing for the wholesale disclosure standard to be of general application would address a fetter on retail supply (though this would remain otherwise constrained by overseas regulations and logistical/commercial frictions);
- (6) it should be clear, on a holistic basis, how retail investor engagement in bond markets can realistically work in practice and then calibrate regulation to deliver that outcome.

Then on 7 March, ICMA [responded](#) to the FCA's related [Future Disclosure Framework discussion paper \(DP22/6\)](#).

ICMA noted its understanding that the debt capital markets are not currently intended to be within the scope of the FCA's replacement regime and that such exclusion could then track the existing exclusion from the UK's Consumer Duty (subject to a pending amendment reported separately in this edition of the Quarterly Report).

ICMA's limited response detail then illustrated why such exclusion is appropriate, notably mentioning:

- (1) the intrinsic limitations of retail disclosure (including material rates of investor misunderstanding);
- (2) that attempting to “future proof” the PRIIPs regime (in the hope of catching unknown or future products that might otherwise skirt around the regime) made it disproportionately and ambiguously wide and that, instead, market developments should be monitored and regulation efficiently updated if and when necessary;
- (3) responsibility for disclosure should start at the point of sale (subject to arrangement otherwise);
- (4) a “manufacturer” should only be liable for the retail sale of a product with no KID to the extent it was complicit in making the product available to retail. (Manufacturers consequently adopted mitigating steps restricting retail bond supply, illustrating why debt capital markets should be excluded from the FCA's replacement regime).

Whilst ICMA will continue its engagement with the UK's replacement of the PRIIPs regime, it will also be interesting to see what the European Commission intends regarding the EU's PRIIPs regime - with an Investment Package (including improving the retail investment framework and a retail investment strategy) [slated](#) for the 3 May meeting of the European Commissioners. (ICMA [responded](#) in August 2021 to the Commission's May 2021 consultation on a retail investment strategy for Europe, including on PRIIPs, as reported in a [related article](#) from the Fourth Quarter 2021 edition of this Quarterly Report.)



Contact: Ruari Ewing
ruari.ewing@icmagroup.org